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The transfer of an individual's wealth at death is the largest financial transaction of a lifetime for most people. That is so because life insurance, retirement benefits and virtually every other form of wealth a client owns or controls is transferred to someone at the time of death.

Sadly, the research indicates that most people (often estimated at 55%) die without having done any serious estate planning. The consequence of such “no plan” planning is that the estate is distributed according to certain default rules of inheritance, namely, a one-size-fits-all estate plan created by the Missouri legislature for citizens who fail to exercise one of their most fundamental legal rights.

Public policy does place some limits on the general rule that one may dispose of one's own property in any manner whatsoever. One example of such limits is that the surviving spouse and unmarried minor children are given special protections against being completely disinherited. In addition, after the special priorities of the family are satisfied, creditors are entitled to payment of proven claims ahead of any beneficiaries named in the will.

The spouse and minor children are afforded off-the-top entitlements under the default rules of inheritance in the form of special allowances that cannot be defeated by creditors or creditors of the estate, or even by the terms of the last will and testament of the deceased spouse-parent. Specifically, the family is entitled to: (1) so-called exempt property (household furnishings, one automobile, etc.); (2) a monetary allowance equal to one year’s support based on the prior standard of living; and (3) a homestead allowance (50% of the remaining estate up to $15,000).

Surviving spouses are usually shocked when they find out that, absent a will providing otherwise, they must split the deceased spouse’s assets with children and/or step-children. However, in Missouri, the surviving spouse inherits only the first $20,000 plus half of the so-called net estate (i.e., the portion of the total estate remaining after the payment of the special family allowances, creditors’ claims and expenses of administration). The children of both the surviving and deceased spouse inherit the remaining half of the net estate. And if the deceased spouse is survived by children from a previous marriage, the surviving spouse must split even that first $20,000 with the step-children.

Under the rules of descent and distribution, if no children survive, the surviving husband or wife receives the entire intestate estate. If there is no will, and if there is no surviving spouse, the kids inherit all of the property. If no spouse or children survive a decedent, the estate is divided equally among parents and siblings, or their descendants. If there is no surviving spouse or blood relative within the ninth degree of kinship, the property escheats to the State of Missouri.

Finally, the surviving spouse is also protected from being completely disinherited by a special election to take against the decedent's will. Under this election the spouse is given the prerogative of choosing between the larger of one-third of the remaining estate (one-half, if the decedent has no lineal descendants) or the share otherwise left to him or her in the deceased spouse’s last will and testament. A couple of important nuances concerning this special election are noteworthy, namely: first, any homestead allowance granted to the surviving spouse
Missouri’s Default Rules for Passage of Property at Death

is offset against the spouse’s elective share, second, calculation of the the surviving spouse’s (fractional) elective share is based on based on a concept known as the “augmented estate.” The augmented estate consists of all money and property owned by the decedent at death reduced by (i) funeral and estate administration expenses, (ii) exempt property, (iii) one-year family support allowance, and (iv) enforceable claims of creditors and, then, increased by the aggregate value of all money and property derived by the surviving spouse from the decedent by any means other than testate or intestate succession (e.g., the spouse’s interest in a trust created by decedent, life insurance death benefits, retirement plan benefits, etc.). The aggregate value of all money and property so derived by the surviving spouse from the decedent is offset against the elective spousal share.

Under Missouri law, a surviving spouse who married a decedent after a will was signed is entitled to receive the same share of the estate the omitted spouse would have received if the decedent had left no will at all. This can turn out to be more than he or she would have received by electing to take against the will.

The chief estate planning goal of most clients is really very simple – they just want to make sure that their assets go “to the right people in the right way”. Their expectation is that, with the estate planner’s help, they will be able to control just how much each of three classes of beneficiaries will receive from their estate. Those three beneficiary classes are, of course, family and friends, charity and unwelcome strangers (all whom clients tend to perceive as predators, including the IRS, probate lawyers and the probate system, in general, ex-spouses, and others). Throughout the estate planning process we lawyers add value by acting as catalysts and directing the attention of our client families to an even broader range of concerns. These may include preserving family harmony (and values), facilitating succession of the family business while equalizing the shares of children active in the business and the inactives, asset protection planning, second marriage planning, addressing the special challenges of “split level” families (those with both self-sufficient, adult children as well as younger, school-age children), retirement planning, business exit strategies, disability planning, trust planning, and estate-gift-income tax planning.

Surprise is the enemy in all estate planning. Our job as a family’s legal advisor is to confront our clients with the consequences of doing nothing. This gives the ones who listen the opportunity to limit the surprises for survivors, and to experience – during their own lifetime – the strategic by-products of thoughtful financial planning.

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